

Steven B. Pokotilow (SBP-2215)
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(212) 806-5400
Attorneys for Petitioner
NeoMedia Technologies, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEOMEDIA TECHNOLOGIES, INC.

Petitioner,

-against-

SCANBUY, INC.,

Respondent.

Civil Action No. **13cv5990**

DECLARATION OF STEVEN B. POKOTILOW IN SUPPORT OF
NEOMEDIA TECHNOLOGIES, INC.'S PETITION TO CONFIRM
ARBITRATION AWARD AND FOR ENTRY OF JUDGMENT

Steven B. Pokotilow, pursuant to 28 USC § 1746, declares the following to be true under penalty of perjury:

1. I am a partner at the law firm of Stroock & Stroock & Lavan LLP, and am counsel for NeoMedia Technologies, Inc., the Petitioner. I have represented NeoMedia Technologies, Inc. in connection with the Arbitration and the Arbitration Award that NeoMedia seeks to confirm and I am familiar with all matters in connection with proceeding.

2. On August 23, 2013, Louis Murray, Court Clerk at Stroock & Stroock & Lavan LLP presented to Judge Schofield Petitioner's Motion and Order to Seal the documents annexed to this Petition for an Order to Confirm the Arbitration Award and Entry of Judgment. As noted in Mr. Murray's Declaration (Exhibit A hereto annexed), Judge Schofield refused to sign the [Proposed] Order to Seal. For this reason, certain business documents identified as Exhibit 2 to the Demand, which is attached to the Declaration of Laura Marriott as Exhibit B, have been omitted. It is believed that these omission will not affect Petitioner's right to Confirm the Arbitration Award and obtain Entry of Judgment as requested.

Dated: August 26, 2013
New York, New York

STROOCK & STROOCK & LAVAN LLP

By: 

Steven B. Pokotilow (SBP-2215)
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*Attorneys for Petitioner
NeoMedia Technologies, Inc.*

Exhibit A

Steven B. Pokotilow (SBP-2215)
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NeoMedia Technologies, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEOMEDIA TECHNOLOGIES, INC.

Petitioner,

Civil Action No. _____

-against-

SCANBUY, INC.,

Respondent.

AFFIDAVIT OF LOUIS MURRAY

I, Louis Murray, a court clerk employed by the law firm of Stroock & Stroock & Lavan LLP, having offices at 180 Maiden Lane, New York, New York, declare that the following is true and accurate to the best of my knowledge.

1. On August 23, 2013, I brought a copy of the [Proposed] Order Permitting NeoMedia to File a Motion to Confirm and Arbitration Award Under Seal (Exhibit 1); Declaration of Steven B. Pokotilow in Support of NeoMedia Technologies, Inc.'s Application to File Petition to Confirm Arbitration Award Under Seal (Exhibit 2); and NeoMedia Technologies, Inc.'s Memorandum of Law in Support of Its Application to File Petition to Confirm Arbitration Award Under Seal (Exhibit 3) to the Honorable Lorna G. Schofield, the Presiding Part 1 Judge, for signature. Judge Schofield refused to sign the [Proposed] Order.

2. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Dated: August 23, 2013
New York, New York

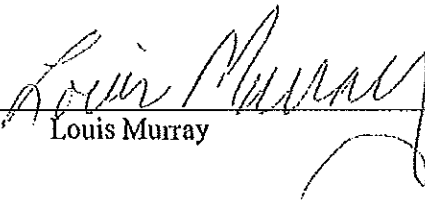

Louis Murray

Exhibit 1

*Settlement, S
Part I*

Steven B. Pokotilow (SBP-2215)
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEOMEDIA TECHNOLOGIES, INC.
Petitioner,
-against-
SCANBUY, INC.,
Respondent.

Civil Action No. _____
FILED UNDER SEAL

**[PROPOSED] ORDER PERMITTING NEOMEDIA TO FILE A
MOTION TO CONFIRM AN ARBITRATION AWARD UNDER SEAL**

Upon consideration of the Declaration of Steven B. Pokotilow in Support of NeoMedia Technologies, Inc. ("NeoMedia") Motion For An Order Permitting NeoMedia to File a Motion to Confirm Arbitration Award Under Seal pursuant to Rule 5.2(d) of the Federal Rule of Civil Procedure, NeoMedia's memorandum of law in support thereof, as well as all papers and pleadings submitted in this action and all other matters presented, and, good cause appearing therefore.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, the parties are permitted to file the Arbitration Award, the Petition, and the Exhibits in Support of Petition Under Seal. The Arbitrator presiding in the Arbitration between NeoMedia and Scanbuy, Inc. is confirmed in its entirety.

Dated: August ____, 2013
New York, New York

United States District Judge

Part, I

m

Exhibit 2

ORIGINAL

Steven B. Pokotilow (SBP-2215)
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Attorneys for Petitioner
NeoMedia Technologies, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEOMEDIA TECHNOLOGIES, INC.

Petitioner,

Civil Action No. _____

-against-

FILED UNDER SEAL

SCANBUY, INC.,

Respondent.

DECLARATION OF STEVEN B. POKOTILOW IN SUPPORT OF
NEOMEDIA TECHNOLOGIES, INC.'S APPLICATION TO FILE
PETITION TO CONFIRM ARBITRATION AWARD UNDER SEAL

Steven B. Pokotilow, pursuant to 28 USC § 1746, declares the following to be true under penalty of perjury:

1. I am a partner at the law firm of Stroock & Stroock & Lavan LLP, and am counsel for NeoMedia Technologies, Inc., the Petitioner. I have represented NeoMedia Technologies, Inc. in connection with the Arbitration and the Arbitration Award that NeoMedia seeks to confirm and I am familiar with all matters in connection with proceeding.

2. I submit this Declaration in support of NeoMedia's Petition to confirm the award issued by the Arbitrator in the above-captioned arbitration and to maintain the Award and Petition under seal on May 13, 2013, as modified on May 23, 2013 ("the Award").

3. The Award is based on a dispute between the Petitioner and Respondent regarding the failure by Scanbuy to pay royalties and provide accurate royalty reports to NeoMedia based upon a Settlement Agreement between the parties.

4. NeoMedia convened the underlying arbitration on July 30, 2012 and sought the payment of royalties due to NeoMedia and for Scanbuy to provide accurate royalty reports due to NeoMedia.

5. Scanbuy filed an Answering statement on August 20, 2012, seeking the return of certain royalties paid to NeoMedia.

6. Following a three day oral hearing in this District in March 2013, the Arbitrator issued the Award on May 13, 2013 and a modification of the Award on May 23, 2013 ("Final Award").

7. The Final Award contains provisions which require Respondents to make payments spanning into the future for an indefinite period of time, and hence NeoMedia is

presenting a Petition to confirm the Final Award and to request entry of a Judgment consistent with the Final Award.

8. Paragraph 9.1 of the Settlement Agreement that was interpreted by the Arbitrator requires that "Except where such disclosures is required by law..., the Parties agree to keep confidential ... the terms and conditions of this Agreement..."

9. Paragraph 9.3 of the Settlement Agreement in dispute has a requirement that "if any party is obligated to produce the Agreement...that party shall promptly notify the other Party... to allow the other Party... to object to the requested production."

10. Based thereon, Scanbuy is obligated to maintain the Settlement Agreement in confidence, when it moves to confirm the Final Award, unless such disclosure is required by law. For this reason, NeoMedia is moving to confirm the Arbitration Award under seal to meet the terms of the Settlement Agreement between the parties

11. NeoMedia has not made any prior application with this court or any other court for the relief requested in this motion to seal.

Dated: August 23, 2013
New York, New York

STROOCK & STROOCK & LAVAN LLP

By: 

Steven B. Pokotilow (SBP-2215)
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NeoMedia Technologies, Inc.*

Exhibit 3

ORIGINAL

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NeoMedia Technologies, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEOMEDIA TECHNOLOGIES, INC.

Petitioner,

-against-

SCANBUY, INC.,

Respondent.

Civil Action No. _____

FILED UNDER SEAL

NEOMEDIA TECHNOLOGIES, INC.'S MEMORANDUM OF LAW
IN SUPPORT OF ITS APPLICATION TO FILE PETITION TO
CONFIRM ARBITRATION AWARD UNDER SEAL

Petitioner NeoMedia Technologies, Inc., ("NeoMedia"), by its attorneys Stroock & Stroock & Lavan LLP, pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure ("F.R.C.P."), respectfully moves this Court for an Order permitting it to file under seal the accompanying petition to confirm an award issued by the Panel in the arbitration between NeoMedia and Respondents Scanbuy, Inc. ("Scanbuy") and all of its corresponding exhibits.

BACKGROUND

NeoMedia Technologies, Inc. ("NeoMedia") commenced the underlying arbitration on July 30, 2012, and sought the payment of royalties due to NeoMedia and royalty reports due to NeoMedia. Declaration of Steven B. Pokotilow, dated August 23, 2013, ("Pokotilow Dec. ¶ 4"), In response Scanbuy filed a counterclaim seeking the return of certain royalties paid to NeoMedia. Following a three (3) day oral hearing in this District, the Arbitration Panel issued an Award on May 13, 2013 and a modification of the Award on May 23, 2013. ("Final Award"). (*Id.*, ¶ 7). The Final Award was a final, reasoned award which contained findings of fact and resolved each of the issues before the Panel. Because the Final Award contains provisions which require Respondents to make payments spanning into the future for an indefinite period of time, NeoMedia is presently filing a petition to confirm the Final Award and to request entry of a judgment consistent with the award. (*Id.*, ¶ 10).

Paragraph 9.1 require that unless such disclosures is required by law, the parties to the Settlement Agreement are requested to keep the terms of the Settlement Agreement confidential. (*Id.* at ¶ 8).

Under Paragraph 9.3 of the Settlement Agreement in dispute, it is a requirement that "if any Party is obligated to produce the Agreement.... that Party shall properly notify the other Party...to allow the other Party... to object to the requested production. (*Id.* at ¶ 9).

ARGUMENT

NEOMEDIA SHOULD BE PERMITTED TO FILE ITS PETITION TO CONFIRM THE ARBITRATION AWARD UNDER SEAL PURSUANT TO THE SETTLEMENT AGREEMENT

Pursuant to F.R.C.P. 5.2(d), the "court may order that a filing be made under seal..."

With respect to the sealing of judicial material:

There is a presumption of public access to judicial documents. This presumption is "based on the need for federal courts...to have a measure of accountability and for the public to have confidence in the administration of justice." ... This presumption of access is not absolute, and can be overcome if a court determines that countervailing factors warrant confidentiality. Such factors can include law enforcement concerns, the need for judicial efficiency, and the privacy interests of the parties resisting disclosure.

Liberty Re (Bermuda) Ltd. v. Transamerica Occidental Life Ins. Co., 2005 WL 1216292 at *6 (S.D.N.Y. May 23, 2005) (internal citations omitted) (citing *U.S. v. Amodeo*, 71 F.3d 1044, 1048-1050 (2d Cir. 1995)).

This proceeding involves a commercial dispute between two private parties interpreting a Settlement Agreement; it does not involve an issue of public importance. Thus, this proceeding, involves arbitration information regarding a Settlement Agreement and the parties have agreed in the Settlement Agreement to protect the Settlement Agreement from disclosure.

CONCLUSION

For the foregoing reasons, NeoMedia respectfully submits that the Court enter an Order permitting NeoMedia to file its Petition to Confirm the Arbitration Award, and its accompanying exhibits and papers, under seal and granting any further relief that the Court deems just and proper.

Dated: August 23, 2013
New York, New York

STROOCK & STROOCK & LAVAN LLP

By: 

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